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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DELAWARE MARKETING PARTNERS, LLC, :  
a Delaware limited liability company, :  
Plaintiff :

v.

: Case No. 04-263 Erie

CREDITRON FINANCIAL SERVICES, INC., :  
a Pennsylvania corporation, and :  
TELATRON MARKETING GROUP, INC., :  
a Pennsylvania corporation, :  
Defendants :

Deposition of TERRY SMITH, taken before and  
by Sondra A. Black, Notary Public in and for the  
Commonwealth of Pennsylvania, on Wednesday, May 24,  
2006, commencing at 3:36 p.m., at the offices of  
Elderkin Martin Kelly & Messina, 150 East Eighth  
Street, Erie, Pennsylvania 16501.

For the Plaintiff:

Charles Snyderman, Esquire  
Charles Snyderman, PA  
Stoney Batter Office Building  
5301 Limestone Road, Suite 214  
Wilmington, DE 19808

Douglas M. Grimsley, Esquire  
Dickie McCamey & Chilcote, P.C.  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5402

For the Defendants:

Craig A. Markham, Esquire  
Elderkin Martin Kelly & Messina  
150 East Eighth Street  
Erie, PA 16501

Reported by Sondra A. Black  
Ferguson & Holdnack Reporting, Inc.

EXHIBIT

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1 A. Well, I wasn't here for her questioning --

2 Q. That's why I'm sharing with you something that I  
3 wrote down that she said to see if that helps you remember  
4 what happened a couple years ago.

5 A. Delaware Marketing Partners I don't think was  
6 beating me up, if that's what you're saying. It was more  
7 internally. I was probably taking some heat that the  
8 conversion went down because I was in charge of production.

9 Q. Who were you taking heat from?

10 A. That's hard for me to answer because I don't  
11 specifically remember, but I was just trying to -- the  
12 production went down, I'm sure I would have heard about it.  
13 But I don't remember.

14 Q. Were you concerned about the production going down?

15 A. Absolutely.

16 Q. Did you make any recommendations as to how to get  
17 the production up?

18 A. New leads.

19 Q. Was there any discussions about how to get better  
20 leads?

21 A. Well, I went to Trish because Trish was the person  
22 speaking to Brian at that point, she was the contact person,  
23 and she communicated to Brian the situation we were in at  
24 that moment. So that was the communication.

25 Q. When did that occur?

1 A. I don't remember specifically.

2 Q. 2003?

3 A. 2003, yes.

4 Q. Towards the end of the relationship?

5 A. The latter part -- it was the end of the year, yes.

6 Q. Did you ever communicate to Delaware Marketing  
7 Partners that you wanted leads that would convert at a higher  
8 rate?

9 A. I do not recall doing that.

10 Q. Would that have been part of your responsibility or  
11 is that somebody else's responsibility?

12 A. Well, at the point in the relationship when we were  
13 experiencing the 5 percent -- at that point Trish was the  
14 communicator, and that's why she was the one that  
15 communicated.

16 Q. Tell me why the contact person changed from you to  
17 Trish.

18 A. They changed -- or Delaware Marketing Partners  
19 changed their contact person, it used to be Harry, we had a  
20 very good relationship with Harry, and then Brian came on,  
21 and there were great suspicions there were other things going  
22 on, and Trish was the one that was going to communicate to  
23 them.

24 Q. Suspicions on the part of Delaware Marketing  
25 Partners or suspicions on the part of your company?

1 A. Delaware Marketing Partners.

2 Q. So you're telling me that Brian expressed suspicions  
3 to you about other things going on?

4 A. No. I'm not saying that.

5 Q. Please explain. I'm not quite sure I understand.

6 A. Harry was asking for things that were sending up  
7 some major red flags.

8 Q. What did he ask for?

9 A. He asked for our training materials, our scripting,  
10 access to the do not call. Different things that appear --  
11 he said he was bringing someone else on, and we knew we were  
12 having problems paying them as it was, and I went to  
13 Mrs. Cavotto and shared the concern, and so that was all part  
14 of this.

15 MR. GRIMSLEY: Can I interject something at this  
16 point.

17 MR. SNYDERMAN: Who's speaking?

18 MR. GRIMSLEY: This is Doug Grimsley, and I don't  
19 mean to be rude or offend anyone. But the witness  
20 continues to apparently refer to  
21 Mrs. Desanti-Boehm, and I'm not sure the purpose of  
22 that. Maybe the witness can explain why she's  
23 doing that.

24 MR. MARKHAM: You mean looking at her?

25 MR. GRIMSLEY: Continually, throughout the

1 deposition. I don't know if she's looking for  
2 confirmation of her testimony --

3 THE WITNESS: No. I'm not looking for confirmation  
4 of her testimony. I'm looking at you, too, and  
5 Trish is over -- she's a person I know in the room.  
6 I've been looking out the window. But I --

7 MR. GRIMSLEY: I didn't want to offend anyone, I  
8 just want to note it for the record.

9 MR. MARKHAM: It's noted.

10 Q. Did you view Harry's request as red-flag type things  
11 as opposed to him asking for information to try to help your  
12 company improve the results?

13 A. No. I definitely viewed it as red flag instead of  
14 helping with the results.

15 Q. Just so I know, tell me what your thought process  
16 was that told you that these were red flag issues?

17 A. That Harry would be requesting these types of things  
18 this far into the relationship, we became suspicious  
19 something else was going on. There were other conversations  
20 about other programs that didn't materialize, and then he was  
21 coming and asking for these things. So I did go to  
22 Mrs. Cavotto and say I was concerned.

23 Q. Did you ask Harry why he was asking for these  
24 things?

25 A. I don't know if I asked him or he told me.

1 Q. Did he tell you?

2 A. He told me a story.

3 Q. What was the story?

4 A. He told me that they were bringing on another person  
5 and he wanted our training materials and our scripts, to  
6 train them.

7 Q. To train their enough person?

8 A. Yes.

9 Q. Is there a written job description for your  
10 position?

11 A. I think there is.

12 Q. And just to be clear, when I say "your position,"  
13 I'm referring not to your position with your current  
14 employer, but the position with your employer in 2002 and  
15 2003.

16 A. I don't know.

17 Q. If the administrators in production were, on a daily  
18 basis, discussing concerns with you about things like the  
19 number of hours being spent or the results of the calls being  
20 made, whose responsibility was it to communicate those  
21 concerns to Mrs. Cavotto?

22 A. Is this a hypothetical question?

23 Q. Well, I took notes that you said -- you testified  
24 earlier, when I asked you did any of the administrators in  
25 production ever express to you a concern of the number of

1 hours being spent or the results of the calls being made --  
2 my notes are that you testified we discussed it daily. We  
3 discussed concerns all the time. So I'm asking you  
4 whether -- or whose responsibility it was when there were  
5 concerns like that to report those concerns to Mrs. Cavotto?

6 A. I'm not sure if the whole context of the -- my  
7 response because I think I was talking about people, and we  
8 would discuss our performance on the list that day.  
9 Certainly, if there would be, over a period of time, such as  
10 what we were experiencing the latter part of the year 2003, I  
11 would be the person that would say something to Mrs. Cavotto.

12 Q. When you and your administrators in production  
13 discussed the stats daily --

14 A. Um-hum.

15 Q. -- and there were concerns expressed about the  
16 stats, are you saying it was your responsibility to  
17 communicate those concerns to Mrs. Cavotto?

18 A. Well, Mrs. Cavotto receives a flash report --

19 Q. What kind of report?

20 A. A flash report. That would tell her what the sales  
21 per hour were for that shift. So I'm -- you know, I mean,  
22 she would see that. I may not have to say it is what I'm  
23 saying.

24 Q. Who sent Mrs. Cavotto the flash reports?

25 A. I specifically can't -- possibly the administrator,